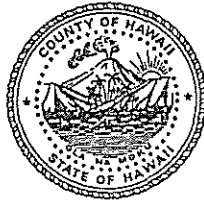


Harry Kim  
Mayor



Christopher J. Yuen  
Director

Roy R. Takemoto  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043  
(808) 961-8288 • Fax (808) 961-8742

July 6, 2004

Mr. Shiro Takata  
c/o HILO ENGINEERING, INC.  
484 Kalanikoa Street  
Hilo, HI 96720

Dear Mr. Takata:

**VARIANCE PERMIT NO. 1463(VAR 04-054)**  
**Applicant: SHIRO TAKATA**  
**Owners: SURETY KOHALA CORPORATION**  
**Request: Variance from Chapter 23, Subdivisions,**  
**Article 6, Division 2, Improvements Required,**  
**Section 23-84, Water Supply, (1) (2)**  
**Tax Map Key: 5-4-002:002, (SUB 03-0141)**

After reviewing the subject variance application and information submitted, the Planning Director certifies the approval of your variance from Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1), to allow a proposed 5-lot subdivision. The variance allows four (4) lots of the proposed 5-lot subdivision to be created without a water system meeting without providing the minimum requirements of the Department of Water Supply (DWS).

The Planning Director has concluded that the variance from the minimum subdivision water system requirements be **approved** based on the following findings:

#### **BACKGROUND**

1. **Location.** The subject property, Lot G containing approximately 143.861 acres, being portions of R. P. 5708, L.C. Aw. 8309, Ap. 1 to Kekaha, portion of Grant 1545 to Kanaina, Grant 742 to Kaohe, and situated at Honomakau, North Kohala, Hawaii.

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2. **Zoning.** The subject property is zoned Agricultural (A-20a) by the County and designated Agriculture (A) by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The applicant-owner(s) submitted subdivision application (SUB 03-0141) which includes a revised preliminary plat map (PPM-Revised), dated May 4, 2004, proposing to subdivide subject TMK property into five (5) lots. Further action on the proposed 5-lot subdivision application was deferred pursuant to letter dated April 27, 2004 in SUB 03-0141.
4. **Variance Application.** The applicant submitted the variance request and subject variance application on or about May 13, 2004.
5. **Agency Comments and Requirements (VAR 04-054):**

- a. The Department of Water Supply (DWS) memorandum, dated June 14, 2004, states in part:

“We have reviewed the subject application and the comments in our memorandum of December 26, 2003, still applies. (A copy is attached.)”

The DWS attached memorandum dated December 26, 2003 states in part:

“We have reviewed the subject subdivision for the proposed subdivision and have the following comments.

Please be informed that the Department’s existing water system facilities cannot support the proposed subdivision at this time. Extensive improvements and additions, including source, storage, transmission, booster pumps, and distribution facilities, must be constructed. Currently, sufficient funding is not available and no time schedule is set.”

**Note:** According to DWS records, it appears that the property was first issued a single 5/8-inch water meter on or about July 7, 1985. The original 1985 meter was replaced and/or billing was changed on or about March 22, 1991 by the DWS. Current DWS records indicate the TMK property is serviced by a 5/8-inch water meter #09090142.

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Furthermore, during a recent inspection of the property to verify agricultural activity, staff discussed the proposed 5-lot subdivision with Mrs. Kim Takata (Applicant's Daughter-In-Law). The agricultural "palm" nursery(s) under saran, etc. currently irrigate the palm nursery(s) with agricultural water drawn from the Kohala Ditch. The non-drinkable irrigation water is available via the Kohala Ditch (Easement) located on proposed "LOT 1". The various nursery operations are dependent on a private water source and Kohala Ditch for their "overhead" private water irrigation system. The availability of private water from the Kohala Ditch and private water irrigation system is expected to continue and be maintained by the users or nursery operations.

The variance from the Chapter 23, Subdivisions, would permit the proposed 5-lot agricultural subdivision to be developed without making further improvements to the existing DWS system or allow a subdivision of the subject TMK property, whereby, 4 lots of 5 proposed 5-lot subdivision would be allowed and be dependent on private rainwater catchment systems for potable and emergency needs. Private irrigation (non-drinkable) water from a private source and privately owned water irrigation system will be continued and maintained by the current users.

- b. The Hawaii County Fire Department memorandum is dated May 25, 2004. (Refer to memorandum in variance file).
  - c. The State Department of Health (DOH) memorandum is dated June 9, 2004. (Refer to memorandum in variance file).
6. **Notice to Surrounding Owners.** The applicant's forwarded a copy of a notice dated May 26, 2004 sent to a list of surrounding property owner(s), and other submittals. Pursuant to these submittals, it appears that the applicant's notice was mailed on or about May 27, 2004.
  7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. No objections from surrounding property owner and public were received:

Therefore, after considering the circumstances and variance background information, rainfall information provided by the applicant, agency comments, and other comments from a

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surrounding property owner, the Planning Director has determined that there are special or unusual circumstances applying to the TMK property which exist either to a degree which deprives the applicant of property rights that would otherwise be available or to a degree which obviously interferes with the best use or manner of development of the subject property.

### **ALTERNATIVES**

There are no other reasonable alternatives in resolving the difficulty of the applicant. The first alternative requires the applicant to extend or improve the existing county water system and provide the necessary dedicable water system improvements in accordance with DWS standards.

The second alternative would be to design, drill and develop private wells and install the necessary water system improvements in accordance with DWS standards.

As such, the imposition of improving the existing public water system or providing an approved alternative water system for four (4) of the proposed five (5) lots subdivision would be putting excessive demands upon the applicant when a more reasonable alternative is available.

### **INTENT AND PURPOSE-WATER VARIANCE**

The intent and purpose of requiring a water system for and within the proposed subdivision is to assure that adequate water is available for human consumption and fire protection.

The State Department of Health has no specific rules or regulations relating to the utilization, construction or inspection of private roof catchment water systems for potable or emergency uses.

The analysis of existing rainfall within the subject property utilizing maps at the Planning Department, DPW, and information provided by the applicant appear to indicate that there is adequate rainfall within the subject property and surrounding areas to support individual or separate private rainwater catchment systems for potable and emergency uses for the proposed subdivision. According to a map- Plate 6-WATER-RESOURCES INVESTIGATIONS REPORT 95-4212, the proposed 5-lot subdivision appears to be nearest active rain gage station "HAWI 168". The analysis of the applicant's submittals and other published rainfall data obtained from the National Oceanic and Atmospheric Administration or NOAA for "HAWI 168" appear to show that the proposed subdivision receives between 42+ inches to 67+ inches of rainfall annually pursuant to (1998-2002) NOAA extracts or rainfall summary(s).

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Given the limited extent and unusual nature of the property's agricultural history and the applicant's intent to purchase the leasehold property for the family or other agricultural purposes, the variance request is reasonable. The proposed subdivision creates only five (5) lots, whereas the full potential density under the A-20a zoning is seven (7) lots. The provisions for water storage, water distribution, and construction of private rain water catchment system(s) or privately owned agricultural irrigation system(s) will be addressed by the applicant or future lot owner(s).

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code and the County General Plan. Furthermore, the variance requested will not be materially detrimental to the public's welfare and will not cause substantial adverse impact to the area's character and to adjoining properties.

#### **VARIANCE DECISION-CONDITIONS**

The variance request to allow a proposed 5-lot subdivision of the subject TMK property without providing a water system meeting DWS standards is **approved** subject to the following variance conditions:

1. The applicant, owners, their assigns, or successors shall be responsible for complying with all stated conditions of approval.
2. Prior to final subdivision approval, the applicant or owner(s), their assigns or successors shall confer with the DWS and designate or assign account number (Account No. 09090142) or DWS water meter to a proposed lot being created by SUB 03-0141. The subdivision application's final plat map (FPM) shall include any further information required by DWS and/or denote any other information required by the DWS.

Provide and identify the location of private irrigation water line easements on "LOT 1" and adjoining proposed lot(s) that are dependent on irrigation water supplied from Kohala Ditch on the subdivision application's final plat map (FPM).

3. WATER VARIANCE: The owners, their assigns, or successors shall file a written agreement or approved written document with the Planning Department within one (1) year from the issuance of tentative subdivision approval and prior

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to receipt of final subdivision approval of SUB 03-0141. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting lots not serviced by a County water system or pending 5-lot subdivision application and shall be duly recorded at the Bureau of Conveyances of the State of Hawaii by the Planning Department at the cost and expense of the owners:

- a. The owners agree and accept the fact that a County dedicable public water system is not now able to service the proposed subdivision SUB 03-0141. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for the imposition of exactions or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance.
- b. The owners agree and accept the fact that the County will not, at this time, bear the responsibility of supplying public water to the proposed or affected additional lots created by SUB 03-0141 not serviced by a County water system. No further subdivision of the lots created by SUB 98-0093 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
- c. Any lots created by SUB 03-0141 may not be made subject to a condominium property regime.
- d. No additional farm dwelling or second farm dwelling shall be permitted on any lot(s) created by SUB 03-0141.
- e. Any farm dwelling constructed on a proposed lot not serviced by a County water system shall be provided with and maintain a private potable rain catchment system which includes a minimum 6000-gallon water storage capacity for domestic consumption or potable uses. This private water catchment system shall adhere to the Department of Public Works, Building Division's "Guidelines for Owners of Rain Catchment Water Systems" as well as the State Department of Health requirements related to water testing and water purifying devices.
- f. Each permitted farm dwelling shall be provided with and maintain a private water supply system which includes an additional minimum

3,000 gallon water storage capacity for fire fighting and emergency purposes. The location and capacity of the emergency water supply system, including the necessary compatible connector system, shall meet with the approval of the Hawaii County Fire Department. The Hawaii County Fire Department also advises as a precautionary measure for other uninhabited agricultural structures that consideration be given to the provision of a similar water storage system for fire fighting and emergency purposes.

- g. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the applicant shall be responsible for informing the County Planning Department of such amendments or changes so that the agreement can be amended concomitantly. Further, the written or recorded agreement shall be binding upon the owner(s), their successors or assigns and shall be incorporated as an exhibit and made part of each agreement of sale, deed, lease, or similar documents affecting the title or ownership of the existing property or approved subdivided lots.
  - h. In the event that the County notifies the owner(s) of the lot(s) created by SUB 03-0141 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 03-0141, the owner(s) of the lot(s) created by SUB 03-0141 shall participate in such improvement district or shall pay their pro-rata share of the upgrade and installation of laterals, as determined by the Department of Water Supply.
  - i. The subject property was created by subdivision of a larger parcel pursuant to a variance from the water supply requirement in Section 23-84 of the Hawaii County Code. The subdivider or grantee, the assigns or successors acknowledges that there are no special or unusual circumstances existing on the property, and therefore, there are no grounds for the subdivider or grantee, the assigns or successors to request a further variance from the other agency requirements to permit SUB 03-0141.
4. The subdivision's (SUB 03-0141) final plat map (minimum lot size, minimum average lot size requirements, etc.) shall meet all the requirements of the Hawaii County Zoning Code and the Subdivision Code not covered by this variance. No

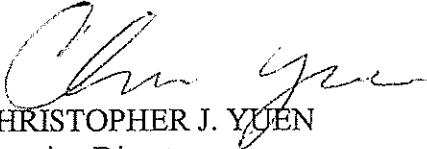
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other variance from Chapter 23, Subdivisions, shall be granted to permit subdivision application SUB 03-0141.

5. The subdivider, owner(s), their assigns or successors shall pay any outstanding real property taxes and comply with all other applicable State statutes and County ordinances pertaining to building improvements and land use.

Should any of the foregoing stated conditions not be complied with, the Planning Director may proceed to declare the subject Variance Permit null and void.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

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cc: Manager-DWS  
Planning Dept.-Kona  
SUB 03-0141